

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	DOCKET NO. 19-10042-NMG
)	
)	
CLEBIO PIO DE LIMA)	

DEFENDANT’S SENTENCING MEMORANDUM

Defendant, Clebio Pio De Lima, pleaded guilty on June 20, 2019 to a two-count indictment alleging that he created and sent a false document to the United States Citizenship and Immigration Services Office (“CIS”), in violation of 18 U.S.C. § 1001(a)(3), and that he later made false statements about the same document to agents of the Federal Bureau of Investigation (“FBI”), in violation of 18 U.S.C. § 1001(a)(2). Mr. De Lima has waived a full presentence interview/investigation, and the United States Probation Department has provided the parties and the Court with an expedited Presentence Report (“PSR”). For the reasons that follow, Mr. De Lima requests that this Court impose a sentence of time deemed served with no period of supervised release to follow. The proposed sentence is sufficient, but no greater than necessary, to effectuate the considerations set forth in 18 U.S.C. § 3553(a).¹ Mr. De Lima respectfully submits this memorandum to assist the Court with sentencing.

I. Defendant’s Background

¹ United States Sentencing Guidelines Section 5D1.1(c) states that the Court “ordinarily should not impose a term of supervised release in a case in which supervised release is not required by statute and the defendant is a deportable alien who likely will be deported after imprisonment.”

Clebio Pio De Lima is now 43 years old. He was born in Simonésia, Brazil. He graduated from high school in Brazil in 1998 but has no education beyond that. In terms of his family ties, his parents are Jose Julio De Lima (passed away in 2000) and Maria De Lima (currently living in Simonésia, Brazil). He has two sisters, Nilcinei and Sirlei De Lima, and one brother, Hebio De Lima. All of them live in Brazil.

Mr. De Lima has two sons who currently live in Brazil with their mother Maria Perreira: Wendel De Lima (19) and Geanderson De Lima (13). He also has a daughter who was born here in the United States, Aaliyah De Lima (6). She lives with her mother, Elizabeth Spinola. Mr. De Lima and Ms. Spinola were married but separated in September of 2017. Prior to living at his last address on Water Street in Quincy, he and Ms. Spinola lived together with their daughter on Knight's Crescent Street in Randolph, MA. While here in the United States, Mr. De Lima has worked, under the table, at various jobs including painting, construction and food delivery (pizza restaurant).

Mr. De Lima has been here in the United States since 2007 as an undocumented alien. He entered on a tourist Visa and then overstayed. He has no criminal history while in this country. Immigration authorities had encountered Mr. De Lima prior to the commencement of this federal case in September of 2018 and removal proceedings were started against him. Immigration and Customs Enforcement ("ICE") has lodged a detainer for Mr. De Lima. The conviction in this federal matter is likely to tip the scale in the pending removal proceeding toward his eventual deportation to Brazil.

II. The Guideline Range Applicable In This Case

The United States Probation Department's calculation of the currently-applicable guidelines in this case is as follows:

- Counts 1 and 2 are grouped pursuant to U.S.S.G. § 3D1.2(d);
- Base offense level of 6, per U.S.S.G. § 2B1.1(a)(2);
- A 2 level reduction pursuant to § 3E1.1 (a), rendering a final offense level of 4.

Defendant agrees with the United States Probation Department's conclusion that his criminal history category is I, which results in a guideline range of 0-6 months.

III. A sentence of time served falls within the applicable guidelines range and is appropriate in this matter given the circumstances underlying the offense conduct.

Mr. De Lima separated from his wife Elizabeth Spinola in September of 2017 when she accused him of infidelity. He was carrying on an extramarital relationship and had not been truthful with her about it. In the aftermath of their separation, Mr. De Lima moved out of their home in Randolph but continued to see and financially support their daughter. Eventually, Ms. Spinola began a dating relationship with Mario Oliveira Junior, Mr. De Lima became upset over the situation and his relationship to Ms. Spinola soured. Jealousy is what drove Mr. De Lima to create the letter anonymously sent to CIS that falsely accused Mario Oliveira Junior, an undocumented alien, of making threats of violence against a local school. Mr. De Lima made matters worse when he was confronted by FBI agents and denied any knowledge of the letter.

Mr. De Lima has accepted responsibility for these grave mistakes which resulted in the unnecessary expenditure of time and resources by both CIS and the FBI in the investigation of a false claim. Furthermore, he understands that he created a great amount of stress and worry for Mr. Mario Oliveira Junior in falsely accusing him of being a violent person who was set upon harming innocent children at a local school. Mr. De Lima recognizes that he should have never done these things but he let his emotions get the better of him and was only thinking of removing

Mr. Oliveira Junior from his wife's and his daughter's lives. He simply did not want to lose his family and acted rashly.

Mr. De Lima has now been in custody since February 7, 2019 or for close to 6 months. This time is now near the high end of the applicable guidelines range agreed to by the parties and the United States Probation Department. This is Mr. De Lima's first criminal case in the United States after having quietly lived and worked here for a little over a decade. This conduct was an aberration triggered by the dissolution of his marriage. The proposed sentence reflects the seriousness of the offense.

A sentence of time served has been a substantial one in Mr. De Lima's personal experience and it is sufficient to deter him from any further similar problems with the law in the future. This conviction has also caused added complications to his already precarious immigration situation. The removal proceeding that ICE has started will likely result in his deportation to Brazil and separation from his daughter here in the United States. As an immigration detainer is in place, a likely lengthy further period of time in ICE custody awaits Mr. De Lima beyond the conclusion of these proceedings. Mr. De Lima respectfully asks that this Court impose the requested sentence for the reasons cited above.

Conclusion

For the foregoing reasons, Mr. De Lima respectfully asks the Court to impose a sentence of imprisonment of time deemed served with no period of supervised release to follow due to his likely removal from the United States. This term of incarceration will provide punishment that is sufficient, but no greater than necessary, to achieve the statutory purposes of sentencing in this case. *See* 18 U.S.C. § 3553(a).

RESPECTFULLY SUBMITTED,

CLEBIO PIO DE LIMA

By His Attorney,

/s/ Oscar Cruz, Jr.

Oscar Cruz, Jr.

B.B.O. #630813

Federal Defender Office

51 Sleeper Street, 5th Floor

Boston, MA 02210

Tel: 617-223-8061

CERTIFICATE OF SERVICE

I, Oscar Cruz, Jr., hereby certify that this document filed through the ECF system will be sent electronically to the registered participant, as identified on the Notice of Electronic Filing (NEF) on July 29, 2019.

/s/ Oscar Cruz, Jr.

Oscar Cruz, Jr.